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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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In the Matter of:

Docket No. S-20762A-10-0416

ULF OLF HOLGERSSON and LAVERNE J. ABE, formerly husband and wife, doing business as Viking Asset Management, an Arizona registered trade name;

**RESPONDENT ABE'S
POST-HEARING BRIEF**

(Assigned to Administrative Law
Judge Marc E. Stern)

Respondents.

Respondent Laverne Abe, by and through her attorney undersigned, hereby submits this Post-Hearing Brief.

I. INTRODUCTION

Respondent Laverne Abe ("Abe") was previously married to Ulf Holgersson ("Holgersson"). Abe and Holgersson were married November 25, 2001, and Abe and Holgersson were divorced on September 7, 2007. The Securities Division ("Division") brought the instant proceeding against Abe and Holgersson by filing a Notice of Opportunity for Hearing ("Notice") on October 14, 2010.

The Division has not alleged any wrongdoing on the part of Abe as concerns the instant matter. Instead, the Division has clearly stated that Abe is named as a party in this matter solely

1 because Abe was at one time married to Holgersson. [See Paragraph 3 of Notice, dated
2 October 14, 2010.]

3
4 Holgersson submitted a Consent Order dated September 6, 2011, which the Arizona
5 Corporation Commission ("ACC") accepted in Decision No. 72588. Abe was provided with a
6 hearing on September 21, 2011, and the Administrative Law Judge has ordered that briefs of
7 the matter be submitted simultaneously by the parties by November 11, 2011.
8

9 For the reasons set forth hereafter, Respondent Abe respectfully requests that she be
10 dismissed from the proceeding with prejudice, or that a decision be rendered finding that Abe
11 has no liability for the damages (restitution and/or administrative penalties) alleged by the
12 Division, pursuant to Arizona law.
13

14 **II. A.R.S. §25-215 DOES NOT PERMIT THE DIVISION TO SEEK**
15 **SATISFACTION OF A JUDGMENT AGAINST ABE FOR A COMMUNITY**
16 **OBLIGATION**

17 A.R.S. §25-215 clearly states that in an action on a community obligation, the spouses
18 are to be sued jointly and the obligation is to be satisfied, first from the community property,
19 and second, from the separate property of the spouse contracting the obligation. In other words,
20 §25-215 gives a debtor the ability to sue spouses jointly, but, the collection on a community
21 debt must first be satisfied from community property and then from the separate property of the
22 spouse responsible for the debt. Nowhere does §25-215 give a creditor (the Division) the
23 ability to seek satisfaction of a community debt from the separate property of the other spouse
24 (Abe).

25 In the instant matter, we have a former spouse (Abe) who the Division admits is not
26 responsible for the underlying debt to the investors, yet, the Division seeks to have a judgment
27 entered against Abe so that it can attempt to satisfy a community debt from Abe's separate
28 property. That is the only reasonable outcome from the Division's motive in pursuing an order
29

1 for restitution and administrative penalties against an innocent former spouse who had nothing
2 to do with creating the debt or obligation to the harmed investors.

3 The Division already has a judgment (Consent Order) against Abe's former spouse,
4 Holgersson, who is solely responsible for the obligation in question. Unless the Division has
5 evidence that Abe is in possession of community property existing from the former marriage
6 between Abe and Holgersson (which was never produced at the hearing), there is no legal basis
7 for pursuing an order against Abe for her former spouse's obligation, because Abe's separate
8 property is not liable to satisfy the obligation in question, pursuant to A.R.S. §25-215.

9
10 **III. A.R.S. §44-2031 DOES NOT PERMIT THE DIVISION TO SEEK JUDGMENT**
11 **AGAINST A FORMER SPOUSE**

12 A.R.S. §44-2031(C) gives the Division the ability to join a spouse in any action in order
13 to determine the liability of the marital community. First, Abe is not a "spouse." The
14 definition of "spouse" is a "married person." [See *Merriam-Webster Dictionary*.] Nowhere
15 does A.R.S. §44-2031(C) state that the Division has the ability or the authority to join a former
16 spouse in a proceeding such as the instant matter. Secondly, the sole authority that the Division
17 has to join a spouse in an action is in order to determine the liability of the marital community.
18 But there is no marital community that exists in the instant matter.

19 The Arizona Supreme Court has previously determined that the term "spouse" in an
20 Arizona statute refers to a current spouse, and not a former spouse, in the context of death
21 benefits. See *Parada v. Parada*, 196 Ariz. 428, 999 P.2d 184 (Ariz. 2000). The Court in
22 *Parada* went on to say that, "Had the legislature intended §38-846 to include exspouses [sic], it
23 could easily have said so." 196 Ariz. 431, 999 P.2d at 187.

24 What is different in the instant proceeding from the Arizona Supreme Court's analysis
25 in *Parada*? In both statutes, the Arizona legislature addressed rights associated with a
26 "spouse." In both statutes, there is reference to a spouse but no reference to a former spouse.
27 The Division has obviously over-reached in this proceeding when it included Abe as a "spouse"
28 when in fact she was not a spouse under any definition of the word.

1 Additionally, there had not been a marital community existing between Abe and her
2 former spouse Holgersson for over three (3) years prior to the date that the Division initiated
3 this proceeding. Pursuant to A.R.S. §25-213(B), the marital community ceased to exist on June
4 19, 2007, the date on which Abe filed her petition for dissolution of marriage. The Division did
5 not file the Notice in this matter until October 14, 2010.

6 Because §44-2031(C) gives the Division the ability to join a spouse in order to
7 determine the liability of the marital community for the debt alleged to have been incurred by
8 Holgersson, there must necessarily be a marital community that exists for the statute to have
9 any application. However, the marital community that once existed between Abe and
10 Holgersson ceased to exist, by Arizona law, on June 19, 2007. Thus, under §44-2031(C), there
11 was no legal basis for the Division to join Abe in the instant action because there was no
12 marital community on which to allege liability against Abe.

13 By the Division's own assertion, Abe was not accused of any wrongdoing. Abe was
14 named solely because she had been Holgersson's spouse at one time, and solely to determine
15 the liability of the "marital community" pursuant to A.R.S. §44-2301(C). Thus, her liability in
16 this proceeding can be based only on whether or not there actually is a "marital community"
17 that still exists. And, by clear application of Arizona law (specifically A.R.S. §25-213(B)),
18 there is no "marital community" between Abe and Holgersson, and there was not a marital
19 community at the time the instant proceeding was brought against Abe. For this reason, Abe
20 must be dismissed from this proceeding.

21
22 **IV. THE DIVISION DID NOT BRING ITS ACTION AGAINST ABE WITHIN A REASONABLE PERIOD OF TIME**

23 If this proceeding was a civil action filed by a private individual, it would have been
24 required to be brought against Abe within one year after the alleged violation occurred. *See*
25 *A.R.S. §44-2004(A)*. Instead, this is a proceeding brought by the Division pursuant to its
26 authority granted by A.R.S. §44-1801, *et seq.*

27 As pertains to the Division's authority and ability to seek action against Abe, the
28 Division gets that authority from A.R.S. §44-2032. Specifically, §44-2032 states as follows:
29

1 “If it appears to the commission, either on complaint or otherwise,
2 that any person has engaged in, is engaging in or is about to engage
3 in any act, practice or transaction that constitutes a violation of this
4 chapter, or any rule or order of the commission under this chapter,
5 the commission may, in its discretion:

6 1. Issue an order directing such person to cease and desist from
7 engaging in the act, practice or transaction, and to take appropriate
8 affirmative action within a reasonable period of time, as prescribed
9 by the commission, to correct the conditions resulting from the act,
10 practice or transaction including, without limitation, a requirement
11 to provide restitution as prescribed by rules of the commission...”

12 [Emphasis supplied.]

13 As the facts set forth above show, the Division did not act against Abe within a
14 “reasonable period of time” in this matter. The Division did not file the Notice initiating this
15 proceeding until more than three (3) years had passed since Abe was divorced from Respondent
16 Holgersson. When considering the “reasonableness” of the time that had passed here, it is
17 important to remember that Abe has not been accused of any wrongdoing here, or of any
18 violations of the applicable statutes concerning the sale of securities. Instead, Abe was named a
19 party to this action solely because she was a former spouse of Respondent Holgersson. There is
20 nothing “reasonable” about the Division’s action against Abe because at the time the Division
21 took its action, Abe had not been married to Holgersson for more than three years.

22 The evidence that the Division did not act within a reasonable time is highlighted by the
23 allegations set forth in the Notice filed by the Division. In the Notice, the Division alleged that
24 Holgersson, Abe’s former spouse, committed securities violations through May of 2008. [*See*
25 *Paragraphs 6, 20, and 23 of the Notice, dated October 14, 2010.*] In other words, some of the
26 alleged securities violations occurred as late as 11 months after Abe initiated the divorce
27 proceeding against Holgersson, and 8 months after the divorce was final. Thus, the Division is
28 seeking damages against Abe for actions taken by her former spouse well after Abe divorced
29 Holgersson. And well after any marital community had ceased, by law, to exist.

30 The Division is required by law to take appropriate action “within a reasonable period of
31 time” after alleged wrongful acts have taken place. The Division obviously did not seek to take
32 action against Abe within a reasonable time here, because her status as a potential party (a
33 spouse of an alleged wrongdoer) had ended more than three years before the Division brought

1 this proceeding. Abe must be dismissed from this proceeding on the basis that the Division did
2 not take appropriate action within a reasonable period of time.

3
4 **V. CONCLUSION**

5 Arizona law (A.R.S. §25-215) does not permit the Division to hold Abe liable for the
6 actions of her former spouse. Arizona law (A.R.S. §44-2031(C)) also does not permit the
7 Division to join Abe in an administrative action against Abe's former spouse, when Abe's
8 inclusion in the proceeding is stated by the Division to be solely based upon Abe's former
9 status as a spouse of the alleged wrongdoer.

10 Even if the marital community that once existed between Abe and Holgersson was
11 liable for the obligation alleged in the Division's Notice, Section 25-215 only permits that
12 obligation to be satisfied from the community property and from the separate property of
13 Holgersson, not from Abe's separate property. And since the marital community ended June
14 19, 2007, there is no community property from which the Division can seek satisfaction of
15 Holgersson's obligation.

16 Though applicable Arizona law does not provide a specific period of time by which the
17 Division must bring its action against Abe, it does require that the Division act within a
18 reasonable period of time in doing so. At the time the Division acted against Abe here, more
19 than three (3) years had elapsed since Abe divorced Holgersson, and the marital community
20 ceased to exist. The Division did not act within a reasonable period of time concerning Abe
21 and this matter must be dismissed as to Abe.

22 The Division has been successful in obtaining a Consent Order from Holgersson.
23 Because there is no community property from which the Division can seek satisfaction, the
24 Division is restrained to seeking satisfaction from Holgersson's separate property. There is no
25 legal basis permitted under Arizona law that permits the Division to seek satisfaction of
26 Holgersson's obligation from Abe's separate property. Thus, there is no legal basis for the
27 Division to seek satisfaction of restitution or an administrative penalty against Abe for the
28 actions of her former spouse. Abe must be dismissed from this docket with prejudice.

29 DATED this 10th day of November, 2011.

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9 ORIGINAL and 13 copies filed this
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